one or more PCS providers -- thus locking out other carriers and resellers. Lastly, the Commission should recognize that unrestricted resale will enable PCS and other CMRS providers to begin marketing their services immediately by reselling the services of established carriers while they build out their facilities.

As the Commission acknowledges, "PCS has not yet even been licensed for operation [and it has] little information about the competitive position PCS will hold in the marketplace. This is also true, albeit to a lesser extent, of wide-area SMR services."[31/] Accordingly NCRA believes that it would be premature to impose any resale restrictions on these services and, as such, any determination about whether to restrict a CMRS provider from reselling a competitor's service after build-out should be postponed.

VII. Preemption

In the event that the Commission does not promulgate regulations requiring CMRS - CMRS interconnection, the Commission should not, as a matter of both law and policy, preempt the states from requiring such interconnection arrangements. Indeed, Section 332(c)(3) of the Communications Act clearly supports the conclusion that, in event the Commission does not promulgate regulations requiring CMRS - CMRS interconnection, it "shall not prohibit a State from regulating the other terms and conditions of commercial mobile service." Furthermore, since states are apt to be highly sensitive to the competitive needs of markets within their jurisdiction, it would be unwise for the Commission to substitute its judgement for the states in matters so critical to the competitive development of mobile

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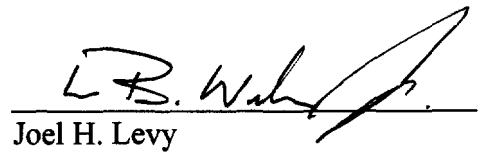
[31/]Notice at ¶ 139.

services. Indeed, allowing state regulation of interconnection permits the experience of the"laboratory of the States" to be utilized as a check on a uniform Federal policy that may be erroneous.

Respectfully submitted

NATIONAL CELLULAR RESELLERS ASSOCIATION

By: 

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Its Attorneys

Dated: September 12, 1994

EXHIBIT
(A)

NCRA Comments
Docket 94-54
September 12, 1994

General Description of Switched Interconnection Between
Facilities-Based Cellular Carriers and Cellular Resellers

Cellular resellers propose to establish their own switching facilities between a carrier's mobile telephone switching office (MTSO) and the interconnections with the landline telephone or other cellular carriers. A diagram of the planned reseller system is enclosed. 4-wire interoffice trunks for voice communications and data circuits for call processing will connect the MTSO with the resellers' planned switching office using T-1 or higher facilities follows.

Resellers propose to assume all of the telecommunications functions on the landline side of the MTSO, as well as many of the switching and administrative functions that are now lodged in the MTSO. Specifically, resellers will maintain their own customer records and will be responsible for verifying and recording the calls of their customers. Resellers will also be responsible for intercept of both the land-to-mobile and mobile-to-land calls of their mobile customers. Resellers may also provide a variety of enhanced services to their customers.

Resellers propose to acquire their own discrete NXX code(s) according to the North American Numbering Plan. These codes, like all other NXXs, will be registered in the MTSO. When the MTSO recognizes the resellers' NXX from a mobile telephone, the customer information should be routed through to the resellers' switch for verification. Once verified, the resellers' switch will signal the MTSO to route the call for completion through the resellers' switch.

Resellers will validate all land-to-mobile calls, as such calls will initially be routed to resellers' switch by the connecting landline carrier. Thus, only validated land-to-mobile calls will be routed through to the MTSO. Resellers will record the duration, origin, destination and billing account of all calls to and from their customers. Resellers will be responsible for billing their customers. The only bill that carriers need prepare is a bulk bill covering all calls to or from resellers' NXX.

Resellers will not interconnect with carrier radio channels, but only with the landline side of the MTSO. Carrier facilities would continue to provide the airtime, mobile handoff and cell site backhaul functions.

For their interoffice trunks, resellers will use standard engineering methods to maintain a call blocking criterion during the designated busy hour of no greater than one percent (1.0%). Resellers will perform routine measurement functions for the facilities ordered to ensure an operating grade of service equal to P=0.01 for traffic interchanged between switches. For initial capacity planning only, these facilities will be designed based on forecasts of usage. Commencing with the in-service date, they will reflect actual usage. Resellers will order additional facilities as required to maintain the designed grade of service.

Based on the forgoing, switch-based resellers would need carriers to identify the following service changes:

1. Per minute charges for airtime, mobile handoff, cell site backhaul.

2. A monthly line termination charge for each T-1 channel terminating at your MTSO.

3. Any non-recurring charge(s) associated with establishing service according to this format.

GENERAL TECHNICAL SPECIFICATIONS

[RESELLER] is preparing to install a cellular reseller's switch in the [_____] MSA. The reseller's switch will interconnect with [Cellular Carrier] cellular system and the LECs in the MSA. Figure #1 depicts the proposed network.

[RESELLER]'s switch has the same switching and administrative capabilities that are part of an MTSO or LEC End Office. [RESELLER]'s switch will not connect directly with the cellular carrier's radio channels or control those channels.

As shown in Figure #1, [RESELLER]'s reseller switch will interconnect with the LEC's via the standard Type 1, 2A or 2B trunks. The interconnection between [RESELLER] and [Cellular Carrier]'s MTSO will be via 4-wire interoffice trunks for the voice circuits and data circuits for call processing as required. Physical interconnection will be via T-1 or higher level facilities.

As previously stated [RESELLER]'s reseller switch will establish and maintain it's own subscriber records. Therefore [RESELLER] will provide it's own subscriber verification. The verification process will occur in one of two ways;

1. When [Cellular Carrier]'s MTSO receives a request for registration, it will forward a request for verification to [RESELLER]'s switch. [RESELLER['s switch will verify the subscriber and pass the authorization back to [Cellular Carrier]'s MTSO.

2. When [Cellular Carrier]'s MTSO receives a request to make a call, it will immediately seize a circuit to [RESELLER]'s switch and pass the subscriber's identification information to [RESELLER] for processing. If the subscriber is invalid, [RESELLER] will terminate the call.

All cellular telephones in the United States are identified by a unique North American Numbering Plan destination address code which is a ten-digit telephone number. The mobile telephones served by [RESELLER]'s switch will be no different. [RESELLER] will obtain its own NXX (block of ten thousand (10,000) numbers), from the North American Numbering Plan Administrator for its subscribers.

CALL HANDLING EXAMPLES

Calls being process through [RESELLER]'s reseller network would be switched within the internal working of the [RESELLER] switch. These types of call would include any existing special features, or any other feature packages that may be developed as technology evolves.

A few examples of the type of calls are:

Mobile to Land: The call is originated by the mobile subscriber. The mobile is connected to [Cellular Carrier]'s MTSO via a cell site. The subscriber is validated and the MTSO connects the mobile to a voice trunk to [RESELLER]'s switch. [RESELLER]'s switch routes the call to the PSTN via a Type 1, 2A or 2B trunk. The PSTN network routes the call to its final destination per the dialed number.

Land to Mobile: The landline customer's call is routed through the PSTN to [RESELLER]'s reseller switch via a type 2A or 2B trunk. [RESELLER]'s switch will verify that the dialed number belongs to a subscriber which has subscribed for [Cellular Carrier]'s service area and then route the call to [Cellular Carrier]'s MTSO. The MTSO will page the mobile and complete the call via a cell site.

Mobile to Mobile: This assumes that both mobiles are subscribers of [RESELLER]. The call is originated by the first mobile and is handled in exactly the same manner as a Mobile to Land call through the point of connection to [RESELLER]'s switch. The switch, upon analyzing the dialed number, determines that the number is another [RESELLER] subscriber and routes the call to [Cellular Carrier]'s MTSO in the same manner as a Mobile to Land call.

Vertical Service Calls

Three-way Calling: The mobile subscriber will either hook flash or dial a predetermined sequence which [Cellular Carrier]'s MTSO will ignore and [RESELLER]'s switch will recognize as a request for a three-way call. [RESELLER]'s switch will place the non-requesting party on hold and allow the requesting party to originate another call. Once the call is established all parties will be connected together.

Call Waiting: The mobile is active with a call in progress when a second call for it is delivered to [RESELLER]'s switch. The reseller switch determines that the mobile has the call waiting feature and alerts it to the waiting call. The mobile subscriber will either hook flash or dial a predetermined sequence which [Cellular Carrier]'s MTSO will ignore and [RESELLER]'s switch will recognize as a request to switch between the active and waiting calls. Upon receiving this request, [RESELLER]'s switch will place the active call on hold and connect the second call.

All Other Types of Vertical Service Calls: These calls require the subscriber to enter a predetermined sequence of digits, such as *70, to activate or deactivate the feature. [RESELLER]'s switch will handle the calls in the same manner. Any peripheral equipment required for the service will be housed in [RESELLER]'s switch.

GRADE OF SERVICE

For the interoffice trunks, the design blocking criteria during the designated busy hour will be no greater than one (1) percent. Standard traffic engineering methods will be used by [RESELLER] to achieve this level of blocking. [RESELLER] will perform routine measurement functions for the facilities ordered to assure that an operating grade of service equal to P=0.01 for traffic interchanged between switches is maintained. This will be based upon forecasts of usage for initial capacity planning only and upon actual measured usage from the in-service date. [RESELLER] will order additional facilities as required to maintain the designed grade of service.

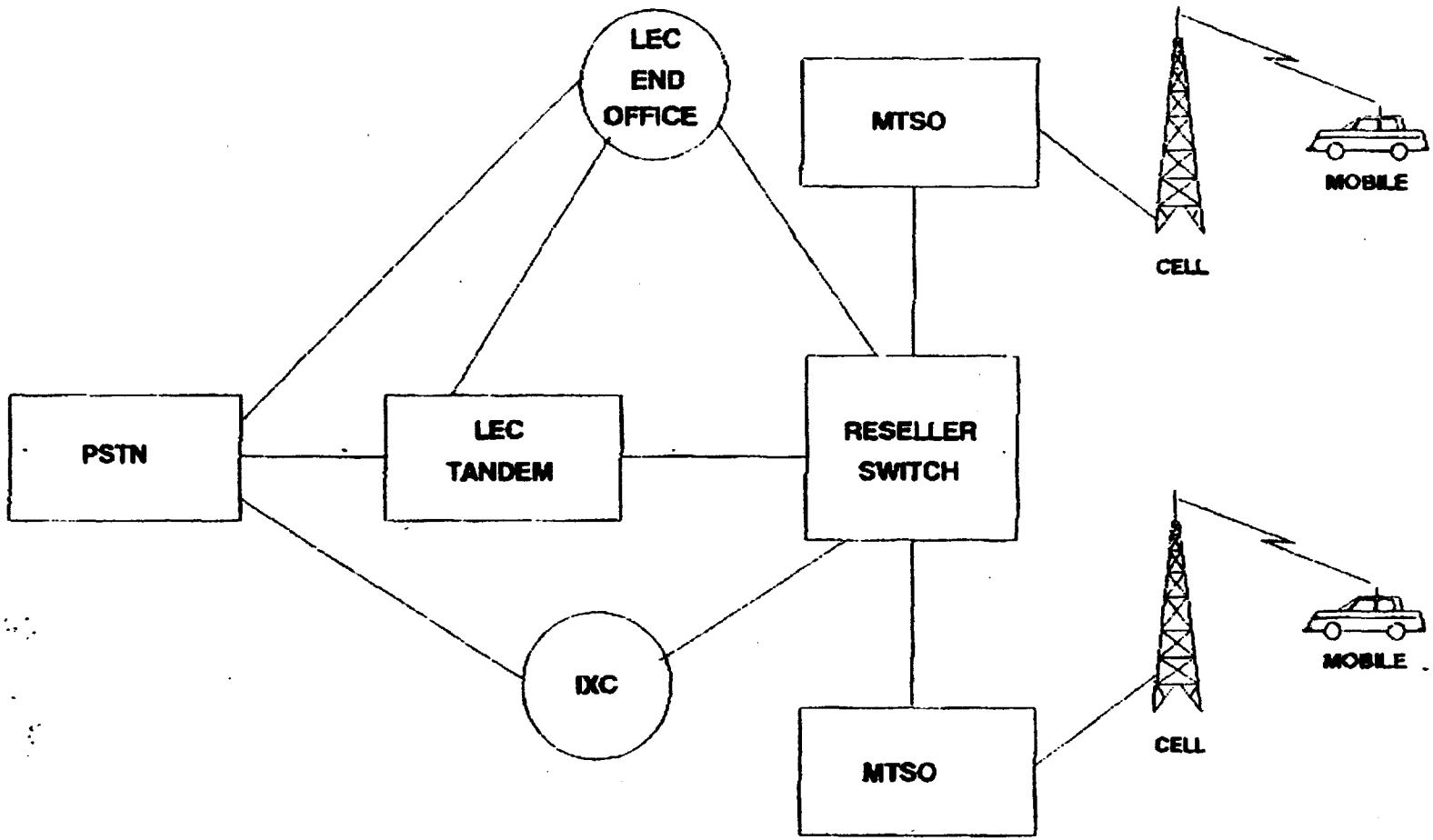
INTERCEPT ARRANGEMENTS

[RESELLER] will provide a voice intercept recorded announcement and/or distinctive tone signals to the calling party when a call is directed to a number within the dedicated NXX code that has not been assigned by [RESELLER] to any subscriber.

When [RESELLER]'s switch is not able to complete calls because of a malfunction in [RESELLER] portion of the network [RESELLER] will, when possible, either divert the call to its operator or provide a recorded announcement to the calling party advising that the call can not be completed.

[RESELLER] will provide answer supervision on all calls including recorded announcements, consistent with standard telephone industry practices.

[RESELLER] will provide disconnect supervision as soon as possible following the completion of a recorded announcement.



Reseller Switch to Radio-Based Cellular

Carriers, LEC & IXC Interconnections

FIGURE 1

EXHIBIT
(B)

NCRA Comments
Docket 94-54
September 12, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)
PARKWAY PAGING, INC. 1200 Commerce, Suite 110 Plano, TX 75093	)
v.	)
SOUTHWESTERN BELL MOBILE SYSTEMS	)

To: The Commission

RESPONSE TO INFORMAL COMPLAINT

Southwestern Bell Mobile Systems, Inc. ("SBMS"), pursuant to Section 208 of the Communications Act of 1934, as amended (the "Act"),[1] and Section 1.717 of the Commissions Rules,[2] hereby submits this Response to Informal Complaint made by Parkway Paging, Inc. ("Parkway").

SBMS Response

Attached to this Response is SBMS' form of Reseller Agreement. SBMS will tender this Reseller Agreement to Parkway for the sole purpose of entering into negotiations with Parkway for Parkway to become a reseller of SBMS' cellular service. This agreement is the same agreement that any other resellers of SBMS cellular service have executed and is bound by.

[1] 47 U.S.C. §208.

[2] 47 C.F.R. §1.717.

subject to an agreement between SBMS and Parkway on the terms of a Reseller Agreement, SBMS will allow Parkway to resell its cellular service. However, this will be done under the normal situation, which means that Parkway will buy blocks of numbers and minimum airtime from SBMS and can then resell those blocks to its customers. SBMS has no intention of allowing Parkway to connect a cellular switch up to SBMS' switch in any form or fashion. Parkway has cited no authority, nor can they, to require such an arrangement between SBMS and Parkway, or any other potential reseller of cellular service. Neither the F.C.C., nor any state commission have required an arrangement similar to the one sought by Parkway.

The applicable Sections of the Act, namely Sections 201(b)[3] and 202(a)[4] only require that any agreement by SBMS not be "[u]njust and unreasonable" or "unreasonably discriminatory" regarding Parkway. By offering Parkway the same reseller agreement offered to all other resellers, SBMS is fully complying with its statutory obligations.

In docket #88-11-040, the California Public Utility Commission ("CPUC") has previously addressed the question of a cellular service reseller connecting its own switch to a facilities-based carrier's switch. After a full hearing on the question, the CPUC declined to grant the reseller's request. To SBMS' knowledge, no other state (nor the F.C.C.) has ever addressed the issue, much less required such connections.

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[3] 47 U.S.C. §201(b).

[4] 47 U.S.C. §202(a).

As stated above, SBMS intends to allow Parkway to resell on the same terms and conditions as any other reseller of SBMS' cellular service, and Parkway is entitled to no different treatment than other resellers.

WHEREFORE, for the foregoing reasons, SBMS respectfully requests that Parkway's informal complaint be dismissed.

Respectfully submitted,

SOUTHWESTERN BELL MOBILE SYSTEMS, Inc.

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EXHIBIT
(C)

NCRA Comments
Docket 94-54
September 12, 1994

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. WESTERN ELECTRIC COMPANY, INC. and AMERICAN TELEPHONE AND TELEGRAPH COMPANY, Defendants.	)	Civil Action No. 82-0192 HHG

MEMORANDUM OF THE UNITED STATES IN RESPONSE TO THE BELL COMPANIES' MOTIONS FOR GENERIC WIRELESS WAIVERS

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July 25, 1994

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 82-0192 HHG
	)	
WESTERN ELECTRIC COMPANY, INC. and AMERICAN TELEPHONE AND TELEGRAPH COMPANY,	)	
	)	
Defendants.	)	

MEMORANDUM OF THE UNITED STATES IN RESPONSE TO THE BELL COMPANIES' MOTIONS FOR GENERIC WIRELESS WAIVERS

Introduction

The United States submits this memorandum in response to three motions by the Bell Companies for generic wireless relief:

1. The United States would support, if modified, that portion of the motion, dated June 20, 1994, of the Bell Companies for a waiver of the interexchange line of business restriction of Section II(D)(1) of the Decree[1] in connection with their "cellular and other wireless services" (the "BOCs' Motion"),[2] which seeks the authority to

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[1] Modification of Final Judgment, *United States v. American Telephone & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982) ("*Decree Opinion*"), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

[2] The record before the Department on the Bell Companies' motion was submitted to the Court with the Bell Companies' June 20, 1994, filing. The principal "wireless" service here at issue is cellular telephony, sometimes referred to by the Court, Congress or the Federal Communications Commission as "mobile radio," "land mobile radio" or, most recently, as "commercial mobile radio service." 47 U.S.C. § 332(d)(1), *as amended*. The term "cellular," describing a radio telephone service in which frequency is reused by dividing a service area into "cells," also describes the technology of services that might come to be offered by potential newcomers to these markets (*i.e.*,

provide interexchange services between cellular exchanges subject to equal access. A proposed order is attached to this memorandum.

2. The United States opposes at this time that portion of the BOCs' Motion that seeks to redraw the existing cellular exchange areas to include Rand McNally's Major Trading Areas ("MTA"), and adding to those MTAs all prior geographic relief. The United States would support the BOCs' request for certain incidental relief, if clarified, and the attached proposed order contains those clarifications.

3. The United States opposes the motions by BellSouth, dated April 15, 1994, and Southwestern Bell, dated June 20, 1994, to remove Section II(A)'s equal access requirement and Section II(D)(1)'s interexchange prohibition, as applied to their wireless services.

All seven BOCs sought that broader relief -- the complete removal of the equal access requirement and the interexchange prohibition -- in their waiver request filed with the Department on December 13, 1991. The United States opposes this relief because none of the BOCs can make the showing required to remove or modify the decree's equal access requirements.[3] After extensive investigation and analysis, the Department has determined that

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licensees of special mobile radio ("SMR") or personal communications services ("PCS") spectrum). However, for simplicity, the mobile and portable radio telephone service today provided by two licensees in each geographic area is referred to in this memorandum as "cellular" service, as distinguished from SMR or PCS services. Other wireless services, specifically paging and radiolocation, are discussed below at pp. 42-45.

[3] As the United States has advised the Court, the legal staff of the Antitrust Division advised the BOCs in May 1993 that it would recommend against removal of equal access, and the BOCs then chose to pursue a waiver limited to line-of-business relief. Memorandum of the United States in Opposition to Motion of BellSouth Corporation for Generic Wireless Relief, pp. 4-5 (Apr. 29, 1994). Thus, there was no request for removal of equal access from BOC cellular exchanges pending when BellSouth or Southwestern Bell filed their instant motions. Nonetheless, the Department's

the removal of equal access would substantially reduce competition in interexchange services from cellular exchanges, but that provision of resold switched interexchange services subject to rigorous equal access conditions would not be likely to reduce competition, and so advised the BOCs by letter dated June 14, 1994 (copy attached as Exh. 1; exhibits separately bound).

Summary of Argument

Simply put, BellSouth and Southwestern seek to terminate their cellular exchange subscribers' ability to obtain interexchange service from competing interexchange carriers, and to require those subscribers instead to obtain that service from the exchange carrier -- subject only to whatever competitive constraint is provided by the existence of a second cellular carrier. The Department concluded that that minimal constraint was insufficient to prevent a reduction of competition in cellular long distance. To the contrary, the market power of each cellular duopolist appears to be sufficient to permit supracompetitive pricing of cellular service; allowing a cellular carrier to provide interexchange service on an exclusive basis would permit that carrier to charge supracompetitive pricing for interexchange services as well. The BOCs' unconstrained ability to abuse control of the local exchange provides additional means to impede competition in interexchange services for cellular customers. *See* pp. 6-26 below.

If, however, a BOC or its affiliate were to be one of several interexchange carriers available to be chosen by a cellular subscriber, the presence of that additional choice does not appear likely to result in *higher* prices for long distance -- *provided that genuine equal access*

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investigation and analysis of the BOCs' requests has given it ample basis to oppose these motions on the merits, even though these motions are, as the Court has recognized, procedurally improper. Order, July 8, 1994, at 4 & n.2.

is preserved. If the arrangements under which the exchange carrier provides access were not in fact equal, were discriminatory, or were administered to give the BOCs' own long distance service a significant advantage, the likely effect would be that other interexchange competitors would be excluded unfairly from competing for that business. As a result, absent genuine equal access, the Department is not persuaded that BOC entry into cellular long distance from their cellular exchanges would not reduce competition in the market they seek to enter.

Whether genuine equal access can be preserved when a BOC is providing access to itself and to its competitors is probably the most difficult issue presented here.[4] The Department believes that genuine equal access can exist in this situation, and has attempted to define the appropriate equal access arrangements where a Bell Company stands on both sides of the equal access interface. The BOCs have said that certain of these safeguards are acceptable to them, and have asked the Department to explain others.[5] The United States conditions its support for the BOCs' motion on these additional safeguards because, without them, the requested relief does not pass muster under Section VIII(C) of the Decree. *See* pp. 29-40 below.

The BOCs also request generic modification of cellular exchange areas, purportedly

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[4] The Court has recognized the dangers of allowing a BOC to provide access to itself and to its competitors. *E.g., United States v. Western Elec. Co.*, 1986-1 Trade Cas. ¶ 66,987, at 62,061 (D.D.C. 1986) ("once a Regional Company is permitted to offer VSR services that are accessed through its own exchange network, it will have every incentive to design the exchange system in a manner that disadvantages suppliers of competing VSR service").

[5] *See* Memorandum of the Bell Companies in Support of their Motion for a Modification of Section II of the Decree to Permit Them To Provide Cellular and other Wireless Services Across LATA Boundaries, June 20, 1994 ("BOC Mem."), at 15-19.

along MTA lines but grandfathering all prior cellular geography relief. The United States urges the Court to defer considering this issue. Wholesale redrawing of the cellular exchange map seems unwise at this time, since the FCC has recently announced that it will be considering this exact issue in its current rulemaking to decide whether to require that all cellular carriers grant equal access to interexchange carriers.[6] Had the BOCs made a compelling showing for the relief they seek, the Court might nonetheless act on that showing. However, the BOCs have not demonstrated that MTAs generally or individually reflect communities of interest for cellular telephony.

If the Commission mandates equal access, and devises a cellular exchange area map, that map may -- but probably will not -- correspond with the LATA map, as adjusted by the Court in the past. The Court will then be faced with the question whether to modify the Decree map to conform to the FCC map. It would make little sense for the Court to determine whether yet a third map should be adopted, when the Commission is likely to consider the same issue and where inconsistent results would be especially problematic. *See* pp. 46-49 below.

Because the Department's analysis of the BOCs' Motion turns in large measure on the vitality of equal access, Part I of this Memorandum argues that BellSouth and Southwestern have failed to demonstrate that the equal access requirement should be removed. Part II then explains the Department's view that, *subject to appropriate equal access safeguards*, BOC entry into cellular interexchange service should not reduce competition, and then describes

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[6] Notice of Proposed Rulemaking and Notice of Inquiry, *In re Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services*, ¶¶ 56-70 (F.C.C. June 9, 1994) (CC Docket 94-54) ("*FCC Equal Access NPRM*").

those safeguards. Part III discusses the BOCs' requests for geographic relief.

Argument

I. THE BELLSOUTH AND SOUTHWESTERN BELL MOTIONS, SEEKING TO REMOVE THE DECREE'S EQUAL ACCESS OBLIGATIONS AS APPLIED TO CELLULAR EXCHANGE SERVICES, SHOULD BE DENIED.

The Court has twice determined that Bell Company provision of interexchange service from cellular exchanges without equal access would be unacceptable. Before divestiture, the Court concluded that "such a development would have been entirely inconsistent with the terms and purposes of the decree, and the Court would not have authorized it." *United States v. Western Elec. Co.*, 578 F. Supp. 643, 647 (D.D.C. 1983) ("*Mobile Services Decision*"). And in the *Triennial Review*, the Court again rejected the BOCs' application for authority to provide, without equal access, interexchange services from their cellular exchanges. *United States v. Western Elec. Co.*, 673 F. Supp. 525, 551 (D.D.C. 1987), *aff'd in part and remanded in part on other grounds*, 900 F.2d 283 (D.C. Cir.), *cert. denied sub nom. MCI Communications Corp. v. United States*, 498 U.S. 911 (1990). BellSouth and Southwestern again seek that relief.

The Court's Order of July 8 asks BellSouth whether, in light of the filing of its motion to vacate the Decree in its entirety, its motion to exempt wireless services from Section II should be deferred. BellSouth has answered in the negative.[7] The United States does not agree that the Court should indulge BellSouth in its filing of multiple overlapping motions,

[7] Response of BellSouth Corp. to the Court's Memorandum Order of July 8, 1994 (July 14, 1994).

taxing the resources and patience of the Court.

However, the United States believes that its response to BellSouth's motion, and to the similar motion of Southwestern, will provide a useful framework for analyzing the BOCs' joint motion. In order to understand how equal access should work in preventing competitive harm, it is first necessary to understand why equal access is essential to prevent that harm.

A. *To Remove Equal Access, Movants Must Show at a Minimum that the Removal of Equal Access from their Cellular Exchanges Would Not Reduce Competition in Long Distance Services from those Exchanges.*

The sought-for removal of the Decree's restrictions on cellular exchanges requires two separate modifications, subject to two different standards of review. The removal of the interexchange restriction implicates the familiar standard for contested waivers under Section VIII(C): Will "the entering BOC will have the ability to raise prices or reduce output in the market it seeks to enter"? *Triennial Review*, 900 F.2d at 296.

The removal of the equal access restriction is not governed by Section VIII(C), which by its terms applies only to modifications of the line-of-business restrictions of Section II(D)(1). Instead, the motion to remove equal access is governed by Section VII and the common law standard it incorporates. This Court recently discussed that standard:

> [A] party seeking an opposed modification of a consent decree "bears the burden of establishing that a significant change in circumstances warrants revision of the decree." Such a change may be either a "significant change in factual conditions or in law." Modification may also be appropriate when "enforcement of the decree without modification would be detrimental to the public interest."[8]

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[8] *United States v. Western Elec. Co.*, 154 F.R.D. 1, 7-8 (D.D.C. 1994; internal citations omitted) ("*AT&T/McCaw Decision*"), *quoting Rufo v. Inmates of Suffolk County Jail*, 112 S. Ct. 748, 760 (1992). The Court determined that *Rufo*, rather than *United States v. Swift & Co.*, 286 U.S. 106 (1932), provided the correct standard for evaluating contested modifications of consent decrees "not

Although these are alternative grounds for modification, this Court correctly recognized that a contested modification should *not* be granted if the modification is contrary to the public interest. *AT&T-McCaw Decision*, 154 F.R.D. at 9.

Therefore, at a minimum, a modification should not be granted, under either Section VII or Section VIII(C) -- where it appears that the result of the modification would be to reduce competition in an affected market. On this application, it is the movants' burden to demonstrate at a minimum that the relief they seek is unlikely to reduce competition in interexchange markets. They plainly have failed to make any such showing. *See* pp. 13-23 below.

B. *As this Court Has Held Repeatedly, Cellular Exchange Service Is "Exchange Service" Subject To the Decree's Equal Access Requirements.*

Alone among the Bell Companies, BellSouth urges the Court to declare that the Decree's equal access and interexchange provisions "do not apply" to wireless services. (BellSouth Mem. 6, Apr. 15, 1994) BellSouth has not withdrawn this argument, which the United States rebutted in its earlier opposition to BellSouth's Motion. (U.S. Mem. 6-10, Apr. 29, 1994) BellSouth nonetheless argues that Section II should now be interpreted to have been intended by the parties and the Court to be limited to the landline local exchange.

As more fully set forth in our prior brief, BellSouth's argument is frivolous. Whether or not the issue was "fully litigated" (BellSouth Mem. 11) as part of a trial that addressed all

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without considerable hesitation." 154 F.R.D. at 8. As the Court noted, *Swift*, long the standard for modifying antitrust consent decrees, presented "a context strikingly similar to that in this case," unlike *Rufo*, which dealt not with antitrust decrees but with prison reform litigation. *Id.*